

IN THE CHANCERY COURT OF PHILLIPS COUNTY, ARKANSAS

CEDAR CHEMICAL CORPORATION

PLAINTIFF

VS.

NO. E-91-349

WORMALD U.S., INC.

DEFENDANT

WORMALD U.S., INC.

THIRD PARTY
PLAINTIFF

VS.

HELENA CHEMICAL COMPANY,
JOHN DOE INDIVIDUALS AND JOHN DOE CORPORATIONS
AS OTHER POTENTIALLY RESPONSIBLE PARTIES

THIRD PARTY
DEFENDANTS

THIRD PARTY COMPLAINT

The Defendant, Wormald U.S., Inc. (Wormald), by and through its attorneys, Chisenhall, Nestrud & Julian, and pursuant to Rule 14 of the Arkansas Rules of Civil Procedure (ARCP), brings this cause of action against the Third Party Defendants, Helena Chemical Company (HCC), John Doe Individuals, and John Doe Corporations as Other Potentially Responsible Parties (PRPs). Wormald incorporates and realleges each and every allegation contained in its Response and all other documents it has previously filed in this matter. For its Third Party Complaint, Wormald states:

JURISDICTION AND VENUE

1. This Court has personal and subject matter jurisdiction and venue of this Third Party Complaint pursuant to the provisions of Rule 14(a) of the ARCP and Ark. Code Ann. § § 16-4-101 and 8-7-520.

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PARTIES

2. HCC is a Delaware corporation duly qualified to do business and currently operating in the State of Arkansas.

3. The PRPs are John Doe parties, including individuals, corporations, partnerships, joint ventures or other legal entities, which have not yet been determined, but of which Wormald reserves the right to include in this cause in the event future discovery or information supplied to Wormald reveals a bona fide cause of action for contribution against such PRPs.

FACTS

4. In 1970 HCC built, owned and operated a manufacturing facility for the production of a rice pesticide, propanil, which facility was located at the current West Helena plant site (the "Site") of the Plaintiff, Cedar Chemical Company (Cedar).

5. On September 15, 1971, J.A. Williams, owner and president of HCC, and The Ansul Company (Ansul), a Wisconsin corporation, entered into an agreement involving organization of a company which would acquire the Site. Attached hereto as Exhibit A and made a part herein by reference are the Agreement, Guarantee Agreement and Bill of Sale (the "Agreement").

6. Pursuant to the Agreement, on September 15, 1971, J.A. Williams agreed to form the Eagle River Chemical Corporation (ERCC), an Arkansas corporation, which owned the Site.

7. From September 15, 1971 to November 15, 1972, Ansul owned 2/3 of ERCC's stock and J.A. Williams owned 1/3.

8. Pursuant to Wormald's information and belief, HCC supplied employees to ERCC after Ansul's involvement with ERCC. Further, certain HCC employees operated, managed and otherwise worked at ERCC, including John Holcomb, plant manager, and William J. Brothers, then Vice-President of HCC and President of Blackhawk Warehouse and Leasing Company, an Arkansas corporation (Blackhawk), of which Mr. Brothers currently is President. Blackhawk also leased employees to ERCC in 1971-72.

9. ERCC modified the Site to include the production of a crop pesticide, dinoseb.

10. On November 15, 1972, Ansul sold its interest in ERCC to ERCC.

11. From November 15, 1972 to 1975, HCC operated, controlled and managed ERCC's manufacturing facilities and production, including supplying employees to ERCC.

12. During HCC's operation of the Site, HCC and ERCC manufactured and produced pesticides and other agricultural chemicals.

13. Upon Wormald's information and belief, after November 15, 1972, HCC and ERCC disposed and arranged for the disposal of pesticides and other agricultural chemicals, which are "hazardous substance[s]" as defined in the Arkansas Remedial Action Trust Fund Act (RATFA) at Ark. Code Ann. § 8-7-503(8) ("hazardous substances"), as follows:

(a) HCC routinely used the Site as a dumping ground for its own wastes, including spent acid, which are

hazardous substances;

(b) Directed, conducted and arranged for the burial of hazardous substances in drums in pits and otherwise at the Site;

(c) Directed, conducted and arranged for the capping of waste disposal ponds and slit trenches containing hazardous substances at the Site;

(d) Directed, conducted and arranged for the construction of levees at the Site to contain stormwater contaminated with hazardous substances, including dinoseb;

(e) Directed, conducted and arranged for the disposal of hazardous substances at areas on the Site and offsite; and

(f) Spilled, released or otherwise discharged hazardous substances into the environment on the Site and offsite.

COUNT I

14. Wormald incorporates and realleges each and every allegation contained in the paragraphs set forth above as if set out word for word.

15. Wormald does not admit that it is responsible under RATFA or any other law for response, removal or contribution costs incurred by Cedar in connection with the Site and pursuant to the Complaint filed in this cause. However, in the event, Wormald is

found liable to Cedar for such costs or ordered to contribute a determined allocated share of such costs to Cedar, the Third Party Defendants, and any other potentially responsible parties, are liable for contribution to Wormald pursuant to RATFA at Ark. Code Ann. § 8-7-520 in that:

(a) The Site is a "hazardous substance site" as defined in RATFA at Ark. Code Ann. § 8-7-503(8);

(b) The Third Party Defendants are each a "person" as defined in RATFA at Ark. Code Ann. § 8-7-503(6); and

(c) The Third Party Defendants are (1) owners and operators of the Site; or (2) persons who, at the time of disposal of the hazardous substances, owned or operated the Site; or (3) generators of hazardous substances who, at the time of disposal, caused such substance to be disposed of at the Site or who caused a release or threatened release of the hazardous substances; or (4) transporters of hazardous substances who causes a release or threatened release of the hazardous substances or who, at the time of disposal, selected a hazardous substance site for disposal of the hazardous substances; or (5) successors to such persons liable for Site remediation;

(d) In addition to being an owner/operator of the Site, HCC is a transporter and/or generator of hazardous substances at the Site;

(e) The Third Party Defendants are liable for the costs of remediation and for contribution for such costs

to Wormald pursuant to RATFA at Ark. Code Ann. § § 8-7-512(a) and 8-7-520; and

(f) The Court should allocate all costs and expenses of remediation at the Site to the Third Party Defendants pursuant to RATFA at Ark. Code Ann. § 8-7-520(d).

COUNT II

16. Wormald incorporates and realleges each and every allegation contained in the paragraphs set forth above as if set out word for word.

17. Pursuant to RATFA at Ark. Code Ann. § 8-7-520(g), Wormald is entitled to a declaratory judgment against the Third Party Defendants in that they are responsible parties for remediation at the Site and for such costs of contribution, which judgment " . . . will be binding on any subsequent action to recover costs and expenses for remedial action."

WHEREFORE, in the event Wormald is found liable for contribution to Cedar, Wormald prays for entry of judgment against the Third Party Defendants as follows:

(a) That the Third Party Defendants are found liable for contribution to Wormald;

(b) For a declaratory judgment against the Third Party Defendants holding them liable for contribution to Wormald, which judgment is binding on any subsequent action by any party to recover the costs and expenses of remedial action; and

(c) That this Court grant judgment for all other necessary costs and expenses incurred by Wormald in pursuing contribution from all potentially responsible parties, including attorney's fees, court costs and any other relief to which this Court may deem Wormald entitled.

Respectfully submitted,

CHISENHALL, NESTRUD & JULIAN, P.A.
400 W. Capitol, Suite 2840
First Commercial Bank Building
Little Rock, Arkansas 72201
(501) 372-5800

By: 

Charles R. Nestrud ABN 77095
Jim L. Julian, ABN 79109
Ann R. Faitz, ABN 86058

-and-

Mr. Daniel Schieffler
SCHIEFFLER LAW FIRM
426 Plaza Street
P.O. Box 2309
West Helena, AR 72390

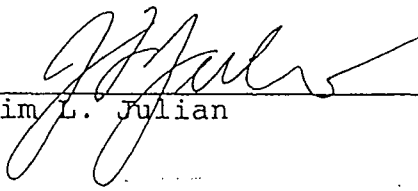
CERTIFICATE OF SERVICE

I, Jim L. Julian, do hereby certify that I have mailed a copy of the foregoing instrument to the following this 18th day of June, 1992:

David Solomon
P.O. Box 490
Helena, AR 72342

Mr. Alan Gates
MITCHELL, WILLIAMS, SELIG & TUCKER
Suite 1000, 320 W. Capitol
Little Rock, AR 72201

Allen T. Malone
APPERSON, CRUMP DUZANE & MAXWELL
Suite 2110
One Commerce Square
Memphis, TN 38103



Jim L. Julian

wormald.3

FILED
At 8:55 O'Clock a M

JUN 22 1992

WANDA W. SCINTOSH, CLERK
By SP D.C.

THIS AGREEMENT made to be effective as of the 15th day of September 1971 between The Ansul Company, a Wisconsin corporation having its principal office at Marinette, Wisconsin (hereinafter called "Ansul") and J. A. Williams, an individual, having his principal place of residence in Memphis, Tennessee (hereinafter called "Williams").

WITNESSETH:

In consideration of the mutual agreements herein contained, the parties hereby agree as follows:

I. Formation of New Arkansas Corporation

1.1 Eagle River Chemical Corporation.

Williams shall form a new Arkansas corporation. The corporation shall be named Eagle River Chemical Corporation (hereinafter called "Company"). The purpose or purposes for which the Company shall be organized are to engage in any lawful activity within the purposes for which corporations may be organized under the Arkansas statutes; it being understood, however, that the initial purpose which the parties intend, without limiting the generality of the foregoing, is to engage in the business of manufacturing and/or formulating agricultural chemicals. The Company shall be formed without delay so as to be able to issue its shares on or before the closing date.

EXHIBIT "A"

1.2 Assumption of Mortgage.

The Company shall assume a mortgage in relation to the site, such mortgage as more fully described, in Exhibit 1 herein, in the principal amount of \$225,000.00, applicable to the site.

II. Williams' Contribution

2.1 Plant and Site.

Williams shall contribute a manufacturing plant and site in Helena, Arkansas, such site as more fully described in Exhibit 2 (herein known as the "Site"). Said contribution shall be made in the form of a warranty deed from Williams to the Company as included in Exhibit 3. Simultaneously therewith, Williams shall deliver to the Company a bill of sale conveying to the corporation all machinery, equipment, inventory and supplies located at the Site.

2.2 Process for Dinitro.

Williams shall, on or before the closing date, deliver to the Company the process for making the product commonly known as Dinitro.

2.3 Purchase Commitments.

Williams, on or before the closing date, shall deliver to the Company, purchase commitments from both Badische Anilin- & Soda-Fabrik A.G. (BASF) and Helena Chemical Company, in the form and in the amounts as per the attached Exhibits 4 through 7.

2.4 Warranties and Representations.

Williams hereby warrants and represents that:

A. Williams has clear and unencumbered title to all of the property described in Exhibit 2; all assets included in the bill of sale at Exhibit 8 are in the possession of Williams and are in good operating condition and repair and conform to all applicable zoning and building laws and ordinances.

B. Williams has no knowledge of any action, pending or threatened, to change the zoning or building ordinances effecting the Site, or any pending or threatened condemnation of such property and there is no litigation, governmental proceeding or investigation threatened or in prospect against the Site or the real property contained thereon.

C. The process for the agricultural chemical commonly known as Dinitro presently in the possession of Williams will produce the product and will produce a product which is commercially acceptable and competitive.

D. Statements made and information given to Ansul concerning the transaction covered by this agreement are true and accurate and no material fact has been withheld from Ansul.

III. Ansul's Contribution

3.1 Amount.

Ansul shall contribute the sum of \$300,000.00.

3.2 Mortgage Guarantee.

Ansul shall guarantee the note secured by the mortgage, both attached as Exhibit 1, which the Company is assuming on the express condition that Williams delivers to Ansul on or before the date of closing, an agreement in the form attached as Exhibit 9, which agreement shall provide that should Ansul be required to pay out any moneys by virtue of its guarantee, Williams shall contribute to the same extent as his percentage ownership in the Company.

3.3 Management and Operation.

While it is understood that the Board of Directors of the Company are charged with its management, it shall be Ansul's responsibility to operate the Company.

IV. Share Distribution

4.1 In consideration of the contributions above stated, the Company shall issue 300 shares of its common stock to Williams and 600 shares of its common stock to Ansul. All such shares shall be fully paid and non-assessable.

V. Closing

5.1 Date.

The parties agree to close the transaction and to deliver all documents listed below on or before SEP 15TH, 1971.

5.2 Instruments to be Delivered.

On or before the closing date, Ansul shall deliver the following documents:

A. Its guarantee in the form described in Exhibit 10 of the note described in Exhibit 1.

B. The approval of its Board of Directors in relation to the guarantee contained in Exhibit 10.

C. Cash in the amount of \$300,000.00.

On or before the closing date, Williams shall deliver the following documents:

A. The process for making the chemical commonly known as Dinitro.

B. Signed purchase commitments as designated in Exhibits 4 through 7.

C. A warranty deed in form satisfactory to Ansul's counsel transferring the property as described in Exhibit 3.

D. A bill of sale in form satisfactory to Ansul's counsel transferring all machinery, equipment, inventory and supplies located on the 7th Street facilities as described in Exhibit 8.

E. Certified copy of a resolution in a form satisfactory to Ansul's counsel signifying Helena Chemical Company's approval for the sale of the property described in Exhibit 2.

F. The agreement attached as Exhibit 9.

G. Three hundred shares of common stock of the Company transferred of record on its books to Williams.

H. Six hundred shares of common stock of the Company transferred of record on its books to Ansul.

VI. Miscellaneous

6.1 This agreement cannot be assigned without the consent of the other party.

6.2 All notices required herein shall be delivered as follows:

J. A. Williams
Helena Chemical Company
1401 N. Main Building
Memphis, Tennessee 38101

Edmund C. Carns
The Ansul Company
One Stanton Street
Marinette, Wisconsin 54143

6.3 Both parties shall cooperate on all things deemed necessary by their respective counsel's so as to complete the transaction as soon as practicable.

6.4 It shall be the responsibility of The Ansul Company to release any information on the transaction; it being understood that Williams shall not be mentioned in any such disclosure.

6.5 This is the entire transaction.

IN WITNESS WHEREOF, the parties have set their hands
and seals on the day first above written.

J. A. WILLIAMS

By

J. A. Williams

Attest:

John Bumpson

THE ANSUL COMPANY

By

H. C. Hoxby

Attest:

[Signature]

GUARANTEE AGREEMENT

WHEREAS, The Ansul Company and the undersigned have entered into a joint venture involving mutual ownership and operation of a corporation known as Eagle River Chemical Corporation (the "Corporation"); and

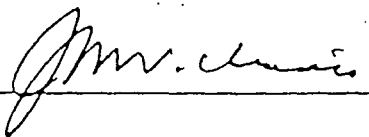
WHEREAS, The Ansul Company has, in connection with the financing of said Corporation, guaranteed the payment of a certain promissory note between Helena Chemical Company, as Grantor, and the Corporation as Grantee; and

WHEREAS, the undersigned has a financial interest in the organization and operation of the Corporation; now therefore:

The undersigned hereby agrees to reimburse The Ansul Company in proportion to his ownership of said Corporation, for any payments made by said The Ansul Company under said note guarantee.

It is understood by the undersigned that his obligation hereunder, though measured in terms of corporation equity ownership, is personal in nature.

J. A. WILLIAMS



Dated SEP 15, 1971

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That J. A. Williams, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable considerations to it cash in hand paid by Eagle River Chemical Corporation, a corporation organized and existing under the laws of the State of Arkansas, the receipt of which is hereby acknowledged, do hereby sell, transfer, set over and convey unto the said Eagle River Chemical Corporation, their heirs and assigns, all of its right, title and interest in and to the following described property situated in the County of Phillips, State of Arkansas, to-wit:

All machinery, equipment, inventory and supplies located on the Grantors property purchased from Helena Chemical Company, located in Private Survey No. 2412, Phillips County, Arkansas.

TO HAVE AND TO HOLD the same unto the said Eagle River Chemical Corporation, and unto their heirs and assigns forever.

And J. A. Williams does hereby warrant the title to the above described property that same is free from all liens and encumbrances and agree to defend same against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF J. A. Williams has caused this instrument to be executed and attested by John Bumpers

on this 15th day of September, 1971.

J. A. WILLIAMS

By J. A. Williams

ATTEST:

John Bunge

STATE OF Ark)
COUNTY OF Phillips) ss ACKNOWLEDGMENT

BE IT REMEMBERED that on this day came before me the undersigned, a Notary Public duly commissioned, qualified and acting within and for the County and State aforesaid, the within named J. A. Williams and J. A. Williams, to me well known, were duly authorized to execute the foregoing instrument, and they further state and acknowledge that they have so signed, executed and delivered said foregoing instrument for the considerations, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF I have hereunto set my hand and seal as such Notary Public on this 15th day of September, 1971.

Lenna B. Cannon
Notary Public

My Commission Expires:

Feb. 15, 1972